48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1415.

STATE NATIONAL BANK OF LOUISIANA.

APRIL 24, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. VAN ALSTYNE, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2203.]

The Committee on Claims, to whom was referred the bill (H. R. 2203) for the relief of the State National Bank of Louisiana, have considered the facts upon which the same is founded, and respectfully report:

This claim has been favorably reported upon by the Committee on Claims of the Senate at the present Congress. That report (Senate Report 43) correctly states the facts of the case and the legal question involved, and your committee adopts so much of said report as is herein contained, viz:

That the State Bank of Louisiana, a banking corporation chartered by the laws of Louisiana, and located at the city of New Orleans, in 1863, while said city was in the permanent occupation and control of military forces of the United States, through its agents, contracted with various parties residing in Upper Louisiana and Arkansas, who had raised and were the private owners thereof, for the purchase of several hundred bales of cotton. At the dates of these contracts of purchase the venders resided within the lines of the Confederate forces, and commercial relations between the bank and themselves were prohibited, both by the general and statute laws of the Government and by the proclamation of the President of the United States, made under and in pursuance of said laws. The cotton thus purchased or contracted for remained in the possession of several venders until after the 30th June, 1865, when, hostilities having ceased, it was delivered over to the agent of the bank, and by said agent collected together at different points preparatory to shipment to New Orleans.

After the cotton had thus reached the possession of the bank, and while awaiting shipment to New Orleans, special Treasury agents of the United States, on the 27th and 29th July, 1865, and the 18th November, 1865, seized the same and caused it to be shipped to Simeon Draper, the agent of the Treasury Department at New York, by whom it was sold, and the proceeds paid into the United States Treasury. The State Bank of Louisiana, after the close of the war, having been merged into the State National Bank of Louisiana, the latter, as the successor to all the rights and interests of the former bank, made claim to the proceeds of this cotton, but its claim was rejected by the Treasury Department. The bank thereafter, on the 21st September, 1877, instituted an action in the Court of Claims for the recovery of said proceeds, and was defeated in said court by the plea of the statute of limitation. The object of the present bill is to allow the bank to have its claim referred to the Court of Claims for trial and adjudication, just as though the action had been filed in said court within the time authorized by law. Its claim before the Department was not finally determined until after the law of the statute had attached. The rejection of the claim by the Department was based upon the ground that its purchases having been made in 1863 from parties occupying an enemy relation, the bank failed to acquire title to the cotton, and had therefore no valid claim to its proceeds. If the case stood alone upon the contract for the purchase of the cotton in 1863 the correctness of this ruling could not be well questioned. The decisions of the Supreme Court of the United States in Montgomery *vs.* United States, 15 Wallace, 395, and Mitchell *vs.*

United States, 21 Wallace, declare that such contracts of purchase would fail to confer a valid title to the property, and your committee at the present session of Congress have reported against a bill granting relief as to the proceeds of property in a case where the party, by his purchase from inhabitants of insurrectionary districts in violation of the non-intercourse laws of the United States, failed to acquire a valid title. So that if nothing appeared in the present case except the bank's purchase of the cotton in 1863 from venders residing within the Confederate lines, it could not be distinguished from the Mitchell claim, and would be controlled by the principles applied in that case.

But there are important particulars in which the present differs from the Mitchell case. The bank's contract for the purchase of the cotton was not completed in 1863, or during the period of actual war. It had paid and the venders had received the purchase money, but the cotton remained in the possession of the venders under an agreement for its *future delivery*. If the venders had subsequently refused to make delivery and complete the contract, and the bank had tried then, either during or after the war, to recover the cotton, it would have been non-suited in any court of the United States if the illegality of the contract had been pleaded, or if the same had appeared to the court in the course of the trial. The planters did not, however, avail themselves of the illegality of the contract, but on the contrary, recognizing the moral obligation which rested upon them, after receiving the purchase money, they voluntarily completed the contract and delivered the cotton over to the possession of the bank after the war had actually closed. Was this delivery which appears to have been made subsequent to June 30, 1865, in contravention of law or of the non-intercourse acts and regulations of the Government? If the parties could *at that time* have lawfully made an original contract with each other for the sale and purchase of the cotton in question, it is difficult to see any valid reason why they could not *then*, without violation of law or public policy, recognize as binding and complete a contract previously entered into, no intervening rights having attached. Sunday contracts are generally prohibited or forbidden by law; but, when completed on Monday, by delivery, their validity cannot be impeached. The controlling question, therefore, in the present case is, could these parties lawfully hold commercial intercourse with each other when the cotton was delivered; or rather, was such delivery, either as an original transaction or as the consummation of a previous agreement, in violation of law?

On the 24th June, 1865, the President of the United States, by proclamation issued under authority of law, *expressly* ordered that "*all restrictions upon internal, domestic, and coastwise intercourse and trade, and upon the purchase and removal of products*" lying west of the Mississippi River (excepting those relating to property *heretofore* purchased by the agents or *captured* by or surrendered to the forces of the United States) *are annulled*. Under this express authority given by law the bank could legally have purchased this cotton. The venders could lawfully have sold or given it to the bank. When the venders after this proclamation delivered the cotton to the bank it was in effect either a *new sale* based upon the valuable consideration previously received or a voluntary relinquishment and donation of all their rights and title to the property. But suppose it is treated as the affirmation or confirmation of the contract of purchase made in 1863, what rule of law or principle of public policy forbid the *ratification* of that contract after June 24, 1865, before the Government had seized or captured the cotton? As a general proposition, *void*, as distinguished from *voidable*, contracts cannot be confirmed, for the reason that the same legal objections arising from positive law or public policy continue to operate when the confirmation is attempted which existed at the formation of the original contract. But when that is not the case, when he law or public policy that originally vitiates the contract has been changed, when the legal objections to such contracts have ceased to operate, there is no reason why the parties thereto may not lawfully ratify or reaffirm their agreement. If this position is correct the act of the venders in ratifying and completing their contracts by delivery of the cotton after the restrictions upon commercial intercourse had been removed, conferred upon the bank a title to the property just as valid as though the contract had been *first* entered into at the date and place of delivery; so that the case is narrowed down to this, that after all hostilities had terminated and the President had, by his proclamation, removed all restrictions upon trade in the districts formally declared to be in insurrection, the bank applied to the planters who agreed to sell it their cotton in 1863, and requested them to recognize and complete their agreement and confer upon the bank the possession and ownership of the cotton. This they might have refused to do, but feeling the *moral* obligation arising out of the receipt of the money the bank had paid them, they freely delivered the cotton to the agent of the bank, when it was lawful for them to hold intercourse, and before any intervening rights of the Government had attached.

Under those circumstances the transaction may well be termed either a valid confirmation of a former contract, or a new sale as of the date of such delivery, or a gift. When the cotton was so received in 1865 it must be admitted that the *possession* which the bank thereby acquired was a legal one. The cotton had never been captured

"*flagrante bello;*" it had never been abandoned nor seized as such, consequently the United States never acquired the right of seizure coupled with possession before the bank perfected both its title and possession. Whether the agents of the Treasury Department had any authority in law for seizing this cotton in the possession of the bank at the several dates already given is, in the opinion of your committee, a matter of such grave doubt, to say the least of it, as to make this a proper case for the decision of some competent judicial tribunal. What the bank now asks is that it may be permitted to sue in the Court of Claims, and that said court shall hear and adjudicate the case as though it had been instituted within six years after the seizure of the cotton by the officers of the Government. The proceeds of the cotton are in the United States Treasury, placed there by the alleged wrongful acts of special agents of that Department. The bank prosecuted its claim to these proceeds before the Department, hoping for a favorable decision, until its remedy in the Court of Claims was barred by the statute of limitations. Again, claimants in this class of cases were not supposed by the legal profession to have any remedy in the Court of Claims until the Klein case was decided in December, 1871. Under those circumstances the bank, having been guilty of no "*laches*," should not be deprived of the opportunity to have its claim passed upon by the Court of Claims.

Your committee have considered all the evidence connected with this claim; have amended said bill H. R. 2203 by inserting in line 15, after the word "court," the words "in its discretion," and recommend the passage of the bill as amended.

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